

Decision 15-11-033 November 19, 2015

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Pacific Gas and Electric Company for Approval of 2013-2014 Statewide Marketing, Education, and Outreach Program and Budget (U39M).

Application 12-08-007  
(Filed August 3, 2012)

And Related Matters.

Application 12-08-008  
Application 12-08-009  
Application 12-08-010

**DECISION ON CAISO FLEX ALERT  
PROGRAM TRANSFER PROPOSAL**

**Summary**

This decision finds that the California Independent System Operator (CAISO) shall administer and fund the Flex Alert program beginning in 2016. The CAISO will not continue the paid media program that is currently funded by ratepayers of the investor-owned utilities. The CAISO will maintain the Flex Alert brand in order to ensure that the Flex Alert program is an effective tool to maintain grid reliability. The CAISO shall maintain the ability to revise, modify, expand or discontinue Flex Alert activities as necessary to ensure reliable operation of the transmission grid.

This proceeding remains open.

## **1. Background and Procedural History**

The Flex Your Power brand, and its associated brand Flex Alert, was created during the California energy crisis of 2000 and 2001, inspired by emergency energy shortages necessitating emergency conservation by consumers. Today, the Flex Alert program continues to support the State's and the CAISO's emergency efforts for summer preparedness in the event of system emergencies or power shortages. As described by the CAISO and the investor-owned utilities (hereinafter, Utilities or IOUs):

A Flex Alert is an urgent call to Californians to immediately conserve electricity and shift demand to off-peak hours (after 6 p.m.). The Flex Alert campaign is an educational and emergency alert program that informs consumers about how and when to conserve electricity. The CAISO typically issues a Flex Alert when there is potential for an electrical emergency (due to decreased operating reserves) or a transmission emergency (due to power line limitations).<sup>1</sup>

We addressed funding for the Flex Alert program in several recent decisions. First, in Decision (D.) 12-04-045 we authorized 2012 funding for PG&E, SCE, and SDG&E to be used for the Flex Alert emergency alert campaign.<sup>2</sup> The total statewide marketing budget for the campaign was set at no more than \$10 million. Next, in D.12-05-015 we stated "Consistent with the comments of the CAISO, we see value in continuing the emergency response

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<sup>1</sup> The investor-owned utilities referenced in this decision are Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E). The definition is quoted from the Report on "Flex Alert Messaging Coordination and Optimization Report for Summer 2013," filed in this proceeding on May 17, 2013.

<sup>2</sup> D.12-04-045, Ordering Paragraph 19. That Decision addressed the IOUs' applications for approval of demand response programs, pilots and budgets for 2012-2014, including their proposals for demand response-related statewide marketing, education and outreach (ME&O) programs.

portion of Flex Your Power – Flex Alert – in particular for use during hot summer months, or at any other time, when energy supplies have the potential to be tight. Emergency requests for action may be and should be connected to a larger information and education campaign, but they are fundamentally different because they are typically immediate and temporary requests for short-term conservation.”<sup>3</sup> Based on our findings and conclusions in that Decision, we requested that the utilities plan to continue the limited use of Flex Alerts for the emergency type of advertising and calls for conservation advocated by the CAISO in the proceeding, and directed that in their 2013-2014 applications for statewide ME&O, the utilities should propose a budget for Flex Alerts and explain how the Alerts will be coordinated with the overall statewide education and outreach program.<sup>4</sup> The utilities made these proposals in this consolidated docket in August 2012.

We addressed the utility proposals in D.13-04-021, and established annual utility budgets for the Flex Alert program for 2013 and 2014, totaling \$10 million per year.<sup>5</sup>

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<sup>3</sup> D.12-05-015 at 298 and 299 as well as Findings of Fact 108 and 109, and Conclusion of Law 62.

<sup>4</sup> D.12-05-015 Ordering Paragraph 117(d).

<sup>5</sup> For 2013 and 2014, PG&E's authorized annual budget is \$2.5 million, SCE's authorized annual budget is \$6 million, and SDG&E's authorized annual budget is \$1.5 million.

In reaching our decision to authorize this funding for 2013 and 2014, we also considered comments by parties that reflected widespread concern regarding the funding, management, and effectiveness of the program. Based on that record, in D.13-04-021 we assigned several additional tasks to parties.

First, we directed the IOUs and the CAISO to jointly prepare a report describing how they coordinate their messaging efforts during Flex Alert events, and how they would optimize those efforts beginning in the summer of 2013. The IOUs and the CAISO filed and served this report on May 17, 2013. In D.14-12-026 we reviewed the report and found that, although the report was unclear on how Flex Alert messaging was coordinated and optimized by the utilities and the CAISO, we were satisfied that the reporting process had engendered a useful and ongoing dialog between the utilities and the CAISO.

Second, in D.13-04-021 we acknowledged that given the continued reliance upon Flex Alerts for urgent conservation and load reduction, the actual success of the program should be analyzed in order to support future decisions on whether to increase funding and expand the program. To this end, we directed SCE to take the lead in initiating and coordinating an Evaluation, Measurement and Verification (EM&V) study of Flex Alert, measuring 2013 *ex post* load impacts. SCE filed and served this report on February 28, 2014. In D.14-12-026 we reviewed the report and found it to be inconclusive because no statewide Flex Alerts were called in 2013. Nevertheless, we noted that it is still important to determine whether the program is effective enough to warrant support by the ratepayers of PG&E, SCE and SDG&E. Therefore, this issue remained within the scope of this proceeding.

Third, in D.13-04-021 we found that it is logical that the entity controlling the Flex Alert program (currently, the CAISO) also be responsible for administering and securing funding for the program, and that such funding be provided by all customers who benefit from the conservation and load reduction due to Flex Alerts, not just the ratepayers of the IOUs. For these reasons, we ordered SCE to work with PG&E, SDG&E, the CAISO, and other interested parties, to develop a proposal for the transfer of the administration and funding of the Flex Alert program to the CAISO or another entity, effective in 2015. SCE filed and served this report, the “Flex Alert Transfer Proposal” (Transfer Proposal) on April 1, 2014.

We reviewed this Transfer Proposal in D.14-12-026 and found that it offered insufficient support for any decision on our part to transfer the administration and funding of the Flex Alert program to the CAISO effective in 2015, and concluded that the funding, spending and administration of the Flex Alert program in 2015 should continue to be funded by the utilities, and that funding should remain at 2014 levels. However, we directed the assigned Administrative Law Judge (ALJ) in this proceeding to initiate discussions between the CAISO, the investor-owned utilities, and other stakeholders to explore possible post-2015 funding sources and program administrators for the Flex Alert program, in order to inform our review of whether to continue to fund the program in 2016.

Pursuant to D.14-12-026, the assigned Commissioner and the assigned ALJ issued a Scoping Memo on March 6, 2015. The Scoping Memo determined that Phase 1 of this proceeding would develop a record for a Commission decision regarding possible funding sources and program administrators for the Flex Alert program beginning in 2016. To that end, the Scoping Memo invited

parties to file and serve prehearing conference statements providing responses to the following questions:

1. Suggest a detailed outline for a report to the Commission that comprehensively “explores possible post-2015 funding sources and program administrators for the Flex Alert program;”
2. Is the existing factual record sufficient for the report outlined in response to Question 1? Why or why not? If not, what additional information is necessary for the report and subsequent Commission decision?
3. Please provide a proposed procedural schedule for development of the record, preparation of the report, and any necessary subsequent procedural steps, that will allow for a Commission decision by the end of 2015 on whether to continue ratepayer funding of the Flex Alert program in 2016.

On April 6, 2015, responsive prehearing conference statements were filed by the CAISO, PG&E, SCE and SDG&E. The assigned ALJ conducted a prehearing conference (PHC) on April 16, 2015.

At the PHC, the CAISO updated its position in this proceeding to provide its opinion that funding for paid media would not be necessary as part of the Flex Alert program beginning in 2016.<sup>6</sup>

An amended Scoping Memo issued on May 15, 2015. Based on the CAISO's updated position regarding funding for paid media, the amended Scoping Memo determined that the only issues remaining for the Commission to decide in Phase 1 were the administrative aspects of continuing the program. Parties had also indicated that a workshop would be of value in refining the

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<sup>6</sup> Reporter's Transcript at 62-63.

remaining information needed in order to provide support for a Commission decision on administration of the Flex Alert program in 2016. The scope and schedule of Phase 1 of this proceeding was modified as shown below:

1. The utilities shall schedule and facilitate a workshop, after notice to all parties in this proceeding, by July 1, 2015;
2. The CAISO shall file and serve a workshop report no later than 30 days following the workshop;
3. Opening Comments on the report may be filed and served 14 days following the workshop report;
4. Reply comments may be filed and served 7 days following the Opening Comments;
5. The assigned ALJ shall prepare a draft decision on Phase 1 issues by October 6, 2015.

On June 29, 2015, the CAISO and the IOUs filed a joint motion to modify the amended Scoping Memo, stating that they have made considerable progress toward a workable plan for administration and funding of the post-2015 Flex Alert program. They proposed to finalize details regarding the post-2015 Flex Alert program without conducting a workshop, and to file a comprehensive plan for the administration and funding of the Flex Alert program by July 31, 2015. The assigned ALJ issued a ruling suspending the workshop requirement. No comments were filed on the motion, and on July 31, 2015, the CAISO served its "Transfer Proposal of the Administration and Funding of the Flex Alert Program" (CAISO Transfer Proposal).<sup>7</sup>

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<sup>7</sup> The CAISO did not file the Proposal with the Commission's Docket Office on July 31, 2015. On October 28, 2015, the assigned ALJ directed the Docket Office to accept the Proposal for filing with a filing date of July 31, 2015.

## **2. The CAISO Transfer Proposal**

The CAISO states that it has worked collaboratively with PG&E, SCE and SDG&E to develop a proposal for the transfer of the administration and funding of the Flex Alert program to CAISO effective in 2016. The CAISO is willing to administer and fund a modified Flex Alert program beginning in 2016.

However, the CAISO explains that “the transfer proposal is based on certain CAISO-proposed conditions that will allow for an orderly transfer of the Flex Alert program and an effective post-2015 program.”<sup>8</sup> The CAISO’s conditions are the following:<sup>9</sup>

1. The Commission agrees that the CAISO administered Flex Alert Program will not have a paid media component;
2. The CAISO will be able to obtain the Flex Alert brand assets (including the Flex Alert trademark, the Flex Alert Network and the FlexAlert.org URL); and
3. The Commission agrees to transfer full operational and fiscal control of the Flex Alert program to the CAISO.

The CAISO and the Utilities agree that this proposal provides a reasonable approach to transferring control of the Flex Alert program while maintaining what they consider to be its most effective elements. We address each of the CAISO’s conditions in the following discussion.

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<sup>8</sup> CAISO Transfer Proposal at 1.

<sup>9</sup> *Ibid.* at 2.

### **3. Discussion**

At the outset, we express our appreciation to the CAISO for its readiness to engage with the IOUs and to shoulder the responsibility for the Flex Alert beginning in 2016. We agree with the CAISO that its proposed conditions will allow for an orderly transfer of the Flex Alert program and we accept its assertion that these conditions will result in an effective post-2015 program.

#### **3.1. The CAISO-Administered Program Will Not Include Paid Media**

As its first condition for assuming the administration and funding of the Flex Alert program in 2016, the CAISO states that it does not intend to continue the current level of funding, or any funding, for a paid media program associated with Flex Alert. Instead, “the post-2015 Flex Alert program will be primarily focused on earned media resulting from a CAISO called Flex Alert event.”<sup>10</sup> According to the CAISO, its current unpaid media activities during Flex Alert events have been effective and will continue to provide an important tool for meeting grid needs. The Utilities have also stated their willingness to integrate Flex Alert messaging into their local marketing, education and outreach activities. This should help to maintain awareness of the program and support the CAISO’s unpaid activities.

As a result of discontinuation of the paid media program, the CAISO’s Flex Alert program “will not significantly change the CAISO’s current role in the Flex Alert process, nor will it materially increase the CAISO’s administration

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<sup>10</sup> *Id.* Earned media Flex Alert activities include issuing notifications via the CAISO website and its smart phone application, news releases, and social media.

costs.” For these reasons, at this time the CAISO does not believe the transfer would require a stakeholder process or tariff amendments to implement.<sup>11</sup>

Finally, the CAISO states that in the future it may undertake additional functionalities, provided that administration of any Flex Alert functions would only be applicable to CAISO’s balancing area and would further the CAISO’s purpose of ensuring a reliable transmission grid. The CAISO states that once it becomes the administrator of the program, all future Flex Alert activities will be subject to revision, modification, expansion or discontinuation as CAISO deems appropriate.<sup>12</sup>

We accept this aspect of the CAISO’s proposal. In past decisions, we have approved utility budgets that committed ratepayer funds to paid media as a component of the Flex Alert program because the CAISO requested that we do so. Past evaluations of the effectiveness of paid media have been inconclusive, the CAISO’s support for this funding was unwavering, so we considered it prudent to provide the funding. Now, with this proposal, the CAISO has concluded that its current unpaid media activities during Flex Alert events have been effective.<sup>13</sup> We appreciate the efforts made by the CAISO to reevaluate the paid media component of the program, and on the basis of those efforts we

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> The CAISO also references the April 1, 2014 “Utilities’ Transfer Proposal” and states that “document details why continued funding of paid media is no longer supported.” We disagree with this characterization of that document. In D.14-12-026 we concluded that “our own reading of the past studies suggests that the impacts of the Flex Alert program are challenging to isolate and measure, and thus the effectiveness of the program has not yet been affirmed or refuted.” (D.14-12-026 at 14.)

support their determination that the CAISO-administered program will not include paid media.

### **3.2. The CAISO-Administered Program Will Maintain Flex Alert Brand Continuity**

In explaining its second condition for assuming the administration and funding of the Flex Alert program in 2016, the CAISO states its belief that “maintaining the Flex Alert brand is an important element to ensuring that the Flex Alert program is an effective tool to maintain grid reliability.”<sup>14</sup> The CAISO notes that in order to continue with this brand name, it will seek to obtain the Flex Alert brand assets from the current owner of the Flex Alert trademark.

According to CAISO, SCE facilitated meetings earlier this year between CAISO and the current owner of the trademark. These meetings resulted in the following agreements:<sup>15</sup>

1. Use of the trademark/ownership: the current owner of the trademark has agreed to transfer the Flex Alert trademark to the CAISO if this transfer proposal is accepted by the Commission. These trademark assets will be transferred to the CAISO at no cost, except those incidental costs required to transfer ownership of the trademark.
2. Trademark Administration: the CAISO will assume sole ownership and responsibility for administering the trademark.
3. Website: the current owner has agreed to transfer the website URL (www.flexalert.org) to the CAISO if this transfer proposal is accepted by the Commission. This transfer will involve no cost to the CAISO, except any incidental costs required to complete the transfer. The

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<sup>14</sup> CAISO Transfer Proposal at 3.

<sup>15</sup> *Id.*

CAISO will then be responsible for the administration of the website and would determine its role in the CAISO Flex Alert program. The CAISO specifies that future administration of the website would be subject to future revision, modification, expansion or discontinuation by the CAISO.

4. Flex Alert Network: the current owner of the Flex Alert trademark also maintains a database used to alert subscribers through e-mail blasts when a Flex Alert event is called. This database is referred to as the “Flex Alert Network.” Upon approval of this transfer proposal, the Flex Alert Network will be transferred to the CAISO at no cost. Those portions of the Flex Alert Network that are considered proprietary will not be transferred. The CAISO specifies that future use of the Flex Alert Network will be subject to the discretion of the CAISO and based on the need to effectively maintain grid reliability.

We accept this aspect of the CAISO’s transfer proposal. In D.14-12-026, we noted that this challenging, but logistically necessary, aspect of any effort to alter the current structure of the Flex Alert program remained unresolved. We commend SCE for facilitating the discussions necessary to address this challenge, and we express our appreciation to the current owner of the Flex Alert trademark for showing a willingness to engage with the CAISO and the utilities in order to resolve this challenge.

### **3.3. The CAISO-Administered Program Will Be Under Sole Operational Control of the CAISO**

As its third condition for assuming the administration and funding of the Flex Alert program in 2016, the CAISO states that “under this transfer proposal, the Flex Alert program will be under sole operational and fiscal control of the

CAISO beginning in 2016.”<sup>16</sup> As such, “the CAISO will have the authority to revise, modify, expand or discontinue Flex Alert activities as the CAISO deems necessary to make the program a useful asset in reliably operating the transmission grid. The CAISO and the Utilities agree that transfer of full operational control is appropriate based on the CAISO’s proposed responsibilities as administrator and funder of the post-2015 program.”<sup>17</sup>

We accept this aspect of the CAISO’s transfer proposal. As we stated in D.13-04-021, it is logical that the entity controlling the Flex Alert program also be responsible for administering and securing funding for the program. With the CAISO’s willingness to assume sole operational and fiscal control of the program beginning in 2016, that goal has been accomplished. This Commission need no longer directly participate in the program’s operation, and the ratepayers of the IOUs need no longer fund the program. Again, we extend our appreciation to the CAISO for assuming these responsibilities, and to PG&E, SCE and SDG&E for their collaborative efforts in pursuit of this result.

## **5. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission’s Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

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<sup>16</sup> *Ibid.* at 4.

<sup>17</sup> *Id.*

## **6. Assignment of Proceeding**

Carla Peterman is the assigned Commissioner and Stephen C. Roscow is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. The Flex Your Power brand, and its associated brand Flex Alert, was created during the California energy crisis of 2000 and 2001 when emergency energy shortages necessitated emergency conservation by consumers.

2. The Flex Alert program supports the State's and the CAISO's emergency efforts for summer preparedness in the event of system emergencies or power shortages.

3. Flex Alert spending, largely for paid media, totaled \$10 million per year in 2012, 2013, 2014 and 2015. This funding was provided by ratepayers of PG&E, SCE and SDG&E.

4. The CAISO is willing to administer and fund the Flex Alert program beginning in 2016, provided that it maintains the ability to revise, modify, expand or discontinue Flex Alert activities as necessary to ensure reliable operation of the transmission grid.

5. The CAISO-administered Flex Alert program will not include paid media beginning in 2016, but the CAISO will continue its earned media Flex Alert activities, such as issuing notifications via the CAISO website and its smart phone application, news releases, and social media.

6. The owner of the Flex Alert trademark, the Flex Alert Network and the FlexAlert.org URL has agreed to transfer these assets to the CAISO after the Commission approves the CAISO's transfer proposal.

7. The CAISO and the investor-owned electric utilities agree that the CAISO proposal provides a reasonable approach to transferring control of the Flex Alert program while maintaining what they consider to be its most effective elements.

### **Conclusions of Law**

1. The CAISO should administer and fund the Flex Alert program beginning in 2016.

2. The CAISO should acquire Flex Alert-related assets such as the Flex Alert trademark, the Flex Alert Network and FlexAlert.org URL from the current owner of these assets.

3. The CAISO should have sole operational control over the Flex Alert program beginning in 2016, including the right to revise, modify, expand or discontinue Flex Alert activities as the CAISO sees fit in order to ensure reliable operation of the transmission grid.

4. Ratepayer funding of the Flex Alert program is not necessary after 2015.

5. PG&E, SCE, and SDG&E should integrate Flex Alert messaging into their local marketing, education and outreach activities to help maintain awareness of the program and support the CAISO's unpaid activities.

## **O R D E R**

### **IT IS ORDERED** that:

1. Pacific Gas & Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall file Advice Letters within 30 days of the effective date of this decision to reflect the removal of 2016 Flex Alert budgets from their 2016 revenue requirements.

2. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall integrate Flex Alert messaging into

their local marketing, education and outreach activities to maintain awareness of the program and help support the California Independent System Operator's unpaid activities.

3. Application (A.) 12-08-007, A.12-08-008, A.12-08-009 and A.12-08-010 remain open.

This order is effective today.

Dated November 19, 2015, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners